



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

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NOTICE OF ADOPTED AMENDMENT

July 2, 2007

TO: Subscribers to Notice of Adopted Plan or Land Use Regulation Amendments

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: Malheur County Plan Amendment
DLCD File Number 004-06



The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. Copies of the adopted plan amendment are available for review at DLCD offices in Salem, the applicable field office, and at the local government office.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: July 12, 2007

This amendment was submitted to DLCD for review prior to adoption with less than the required 45-day notice. Pursuant to ORS 197.830 (2)(b) only persons who participated in the local government proceedings leading to adoption of the amendment are eligible to appeal this decision to the Land Use Board of Appeals (LUBA).

If you wish to appeal, you must file a notice of intent to appeal with the Land Use Board of Appeals (LUBA) no later than 21 days from the date the decision was mailed to you by the local government. If you have questions, check with the local government to determine the appeal deadline. Copies of the notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR Chapter 661, Division 10). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

***NOTE: THE APPEAL DEADLINE IS BASED UPON THE DATE THE DECISION WAS MAILED BY LOCAL GOVERNMENT. A DECISION MAY HAVE BEEN MAILED TO YOU ON A DIFFERENT DATE THAN IT WAS MAILED TO DLCD. AS A RESULT YOUR APPEAL DEADLINE MAY BE EARLIER THAN THE DATE SPECIFIED ABOVE.**

Cc: Doug White, DLCD Community Services Specialist
Jon Jinings, DLCD Regional Representative
Jon D. Beal, Malheur County

<paa> ya

FORM 2

DEPT OF DLCD NOTICE OF ADOPTION

This form must be mailed to DLCD within 5 working days after the final decision
per ORS 197.610, OAR Chapter 660 - Division 18

JUN 25 2007

(See reverse side for submittal requirements)

LAND CONSERVATION
AND DEVELOPMENT

Jurisdiction: Malheur County Local File No.: 2006-10-021
(If no number, use none)

Date of Adoption: 6-20-07 Date Mailed: 6-21-07
(Must be filled in) (Date mailed or sent to DLCD)

Date the Notice of Proposed Amendment was mailed to DLCD: 12-14-06

- Comprehensive Plan Text Amendment
- Land Use Regulation Amendment
- New Land Use Regulation
- Comprehensive Plan Map Amendment
- Zoning Map Amendment
- Other: _____
(Please Specify Type of Action)

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached."

Adopt an Limited Use Overlay zoning district

Rezone a parcel with the Limited Use Overlay zone

Describe how the adopted amendment differs from the proposed amendment. If it is the same, write "Same." If you did not give notice for the proposed amendment, write "N/A."

Same

Plan Map Changed from : _____ to _____

Zone Map Changed from: EF0 to EFU/LU

Location: TL 2000, Sec 9, T16S, R43E, W4 Acres Involved: 4

Specify Density: Previous: _____ New: _____

Applicable Statewide Planning Goals: 3

Was an Exception Adopted? Yes: No:

DLCD File No.: 004-06 (15689)

FILED
3:48 PM

JUN 20 2007

ORDINANCE NO. 169

DEBORAH R. DELONG County Clerk
By *Sherril Childs* Deputy

In the Matter of:
An Ordinance Adopting a New Land Use)
Zone Entitled Limited Use Overlay Zone)
With the Abbreviation of LU as a)
Malheur County Zoning District)

This action came before the Malheur County Court sitting in regular session for the reading of this ordinance on June 6, 2007, and June 20, 2007.

WHEREAS, the Malheur County Planning Department submitted an application to the Malheur County Planning Commission to establish a new zone entitled Limited Use Overlay Zone with the abbreviation of LU as a Malheur County zoning district; and

WHEREAS, following a quasi-judicial hearing on January 25, 2007, the Malheur County Planning Commission made a recommendation to the Malheur County Court, which was supported by findings of fact and conclusions of law, to adopt the new zoning district; and

WHEREAS, the text of the zone is attached hereto as Exhibit "1" and incorporated herein by reference; and

WHEREAS, attached hereto as Exhibit "2" and incorporated herein by reference are findings of fact and conclusions of law which are adopted by the County Court in support of this ordinance and establishing the new zone.

**NOW THEREFORE, THE MALHEUR COUNTY COURT, STATE OF OREGON
ORDAINS AS FOLLOWS:**

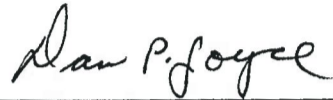
Section 1. Adoption of Zone:

A new zone is hereby adopted as a new zoning district in Malheur County. The new zone shall be called the Limited Use Overlay Zone and be abbreviated as LU. The text of the zone shall be made part of the Malheur County Code as set forth in Exhibit "1" attached hereto and incorporated herein by reference.

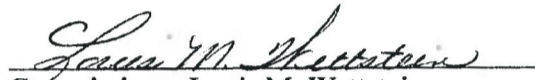
Section 2. Effective Date:

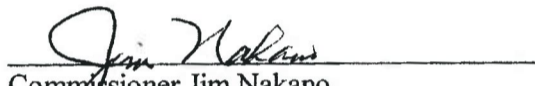
This ordinance shall take effect on the date of adoption.

ADOPTED the 20 day of June, 2007

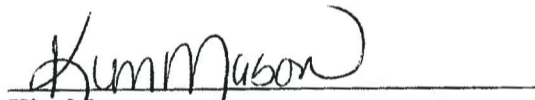


Judge Dan P. Joyce


Commissioner Louis M. Wettstein


Commissioner Jim Nakano

ATTEST:


Kim Mason

CHAPTER 3

ZONING DISTRICTS AND MAPS

ARTICLE J. LU- LIMITED USE OVERLAY ZONE

SECTION:

- 6-3J.1.1: Purpose
- 6-3J.1.2: Permitted and Conditional Uses
- 6-3J.1.3: Site Plan Approval
- 6-3J.1.4: Compliance With State and Federal Regulations

6-3J.1.1: **PURPOSE:** The purpose of the LU Overlay Zone is to limit the list of permitted or conditional uses in an underlying zone through the taking of an exception to a statewide land use planning goal under ORS 197.732. This zone will only be applied when no other existing zone adequately addresses a new use and general activities of these uses. The zone will apply to specific properties as comprehensive plan zone changes affected by an exception under ORS 197.732. A comprehensive plan amendment may or may not include a map amendment to designate the property LU at the county's discretion.

6-3J.1.2: **PERMITTED AND CONDITIONAL USES:** It is intended that the uses and activities in a LU district will be limited to those uses and activities specified in the ordinance goal exception adopting the LU designation for the property. The descriptions of the permitted and conditional uses may be qualified as necessary to achieve the purpose of the LU overlay zone. The LU overlay zone, when adopted, shall carry out the requirement of Oregon Administrative Rule 660-004-018 and ORS 197.732 that where a goal's exception is taken, permitted and conditional uses shall be limited to those uses justified by the exception statement.

6-3J.1.3: **SITE PLAN APPROVAL:** The county may require site plan approval by the planning department of the location of buildings, access, parking, screening and other site plan considerations to assure the compatibility of the permitted and conditional uses within the area. Site plan requirements may be added by specific reference in the LU adopting ordinance.

6-3J.1.4: **COMPLIANCE WITH STATE AND FEDERAL REGULATIONS:** All uses allowed in the LU district shall meet all applicable standards and regulations of any state or federal agency having appropriate regulatory jurisdiction. Prior to issuance of a zoning permit for all permitted uses, evidence shall be submitted indicating the proposed activity has been approved by all appropriate agencies.

EXHIBIT # 1

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Section 6-10-7: COMPLIANCE WITH COMPREHENSIVE PLAN: In considering and amendment to the text or zoning maps, the planning commission and the county court shall determine the following:

A. *That the proposed amendment is consistent with the comprehensive plan.*

Finding: The proposed change is to the text of the MCC. The change is the addition of a new section to MCC Chapter 3, (zoning ordinance) establishing a new zoning district. The new zoning district is the LU-Limited Land Use Overlay Zone. The purpose of the LU zone district is to limit uses and activities in the EFU zone to those justified in a comprehensive plan amendment exceptions statement adopted by the county and acknowledged by the state, or to recognize existing lawfully established nonconforming uses as permitted uses. The text amendment includes language that allows all uses permitted outright or as conditional uses in the underlying EFU zone, on the property designated with the LU overlay zone. The reason for this is that if the property is not developed to the use approved through the goal exception, the property may still be used for those uses allowed in the underlying EFU zone.

If the Comprehensive Plan amendment exception to Goal 3 and the text amendment are approved, the text amendment will be incorporated into the zoning ordinance. The text amendment to the zoning ordinance will implement the change in the Comprehensive Plan. Where an ordinance is consistent with, and implements the Comprehensive Plan (or in this case plan amendment) the ordinance will be consistent with the Comprehensive Plan.

B. *That the level of development in other locations has reached the point whereby additional land is need for the proposed use(s), and that the area of the proposed change can best meet such needs.*

C. *That adequate rural services are available and will not be overburdened*

D. *That amendments to the text or zoning maps which significantly affect a transportation facility shall assure that allowed land uses are consistent with the function, capacity, and level of service of the facility identified in the transportation system plan. This shall be accomplished by one of the following:*

1. Limiting the allowed land uses to be consistent with the planned function of the transportation facility;

2. Amending the transportation system plan to ensure that existing, improved or new transportation facilities are adequate to support the proposed land uses consistent with the requirement of the transportation planning rule; or

3. Altering land use designations, densities, or design requirements to reduce demand for automobile travel and meet travel needs through other modes.

EXHIBIT # 2

A text or zoning map amendment significantly affects a transportation facility if it:

- 1. Changes the functional classification of an existing or planned transportation facility;*
- 2. Changes standards implementing a functional classification system;*
- 3. Allow types or levels of land use that would result in levels of travelor access what are inconsistent with the functional classification of a transportation facility;
or*
- 4. Would reduce the level of service of the facility below the minimum acceptable level identified in the transportation system plan. (Ord. 125, 6-20-2000)*

Finding: The review criteria set forth in MCC Section 6-10-7: B., C. and D. pertain to a comprehensive plan and zoning map amendment and not to a text amendment. These criteria, therefore must be met before a particular site or parcel is approved for designation with the LU zone. The adoption of this particular text amendment does not create a conflict with the Transportation Systems Plan. Also, the LU zone requires the site designated with the LU zone to go through a site review by the planning director prior to any development on the property.

CONCLUSIONS OF LAW

For the foregoing reasons, the Malheur County Court finds that the adoption of the text amendment creating the LU-Limited Use Overlay Zone complies with the Malheur County Comprehensive Plan. The County Court therefore approves the adoption of the LU-Limited Use Overlay Zone.

FILED
4:20 PM

JUN 20 2007

In the matter of:
Ordinance Amending Malheur County's Comprehensive)
Plan To Adopt an Exception to Statewide Planning)
Goal 3 (Agricultural Lands) For a Portion of Tax Lot)
900, Assessor's Map 16S4309, (the Parcel) and)
Amending Malheur County Zoning Maps to Zone the)
Parcel to LU- Limited Use Overlay Zone With the)
Underlying Zone Remaining Exclusive)
Farm Use)

DEBORAH R. DELONG County Clerk
By *Sherril Childs* Deputy

This action came before the Malheur County Court sitting in regular session for the reading of this ordinance on June 6, 2007 and June 20, 2007.

WHEREAS, William D. Heid and Rochell M. Heid (Heids) submitted an application to the Malheur County Planning Commission requesting an amendment to the Malheur County Comprehensive Plan to adopt an exception to Statewide Planning Goal 3 (Agricultural Lands) for a portion of tax lot 900, Assessor's map 16S4309 (the Parcel) and re-zone the Parcel from Exclusive Farm Use zone to LU-Limited Use Overlay zone with the underlying zone remaining Exclusive Farm Use; and

WHEREAS, the portion of the tax lot 900, Assessor's map 16S4309 (Parcel) to be zoned with the LU-Limited Use Overlay Zone is described on the attached Exhibit "1" which is incorporated herein by reference; and

WHEREAS, following a quasi-judicial hearing on January 25, 2007, the Malheur County Planning Commission made a recommendation to the County Court, which was supported by findings of fact and conclusions of law, to approve the application by Heids; and

WHEREAS, attached hereto as Exhibit "2" and incorporated herein by reference are findings of fact and conclusions of law in support of this ordinance approving Heids' application to amend the Malheur County Comprehensive Plan to adopt an exception to Statewide Planning Goal 3 and to amend the Malheur County Zoning maps to rezone the Parcel to LU-Limited Use Overlay zone with the underlying zone remaining Exclusive Farm Use, and

WHEREAS, the Malheur County Court adopts Findings of Fact and Conclusions of Law and finds they set forth compelling facts and reasons to justify and amendment to the County's Comprehensive Plan to adopt an exception to Statewide Planning Goal 3 for the Parcel and to rezone the Parcel to LU-Limited Use Overlay Zone with the underlying zone remaining Exclusive Farm Use.

**NOW THEREFORE, THE MALHEUR COUNTY COURT, STATE OF OREGON
ORDAINS AS FOLLOWS:**

Section 1. Amend Comprehensive Plan:

The Malheur County Comprehensive Plan shall be amended to adopt an exception to Statewide Planning Goal 3 (Agricultural Lands) for a portion of tax lot 900, Assessor's map 16S4309, which is more particularly described in Exhibit "1" attached hereto and incorporated herein by reference (the Parcel).

Section 2. Rezone and Amend Zoning Maps:

The Malheur County Zoning Map shall be amended as shown on Exhibit "3", attached hereto and incorporated herein by reference, and the Parcel shall be rezoned from Exclusive Farm Use to LU-Limited Use Overlay Zone with the underlying zone remaining Exclusive Farm Use.

Section 3. Permitted Uses in the LU-Limited Use Overlay Zone Permitted on the Parcel:

The following uses are permitted outright in the LU-Limited Use Overlay Zone:

- A. Importation of fireworks and high and low explosives
- B. Storage of not more than 400,000 pounds of fireworks and high and low explosives in magazines that are approved by the Bureau of Alcohol, Tobacco, Firearms and Explosives (BATF & E)
- C. Sorting, preparing and loading fireworks for transport to a shooting site
- D. Staging fireworks for fireworks displays
- E. Construction of equipment for use in fireworks displays
- F. Training of employees and others on blasting and the proper storage, handling, transport and operation of fireworks displays
- G. Location of office facilities for use by the business
- H. Construction and placement of an equipment storage building of approximately 600 square feet
- I. Wholesale of fireworks and explosives
- J. All uses permitted outright in the Exclusive Farm Use Zone

- K. Placement of not more than twenty portable storage containers approved by the BATF & E as storage magazines for low explosives
- L. Construction and placement of a high explosives magazine of approximately 200 square feet

Section 4. Conditional Uses allowed in the LU-Limited Use Overlay Zone on the Parcel:

- A. All uses permitted conditionally in the Exclusive Farm Use Zone

Section 5. Performance Standards for Allowed Non-farm Uses in the LU-Limited Use Overlay Zone on the Parcel:

Each non-farm use permitted outright on the Parcel shall meet the following performance standards:

- A. Operation of the business will comply with the rules and regulations of the Bureau of Alcohol, Tobacco, Firearms & Explosives (BATF&E) and the Oregon State Fire Marshall's Office.
- B. All business facilities, office, magazines, accessory buildings, loading and unloading sites and accessory buildings must be located in that area designated with the LU-Limited Use Overlay Zone.
- C. Site security will meet the standards of the Bureau of Alcohol, Tobacco, Firearms and Explosives (BATF&E).
- D. Truck loading and unloading operations shall take place entirely within the site designated with the LU-Limited Use Overlay Zone and shall not be located as to interfere with public roads.
- E. Access to the site will be on a 20 foot wide all weather access road suitable for emergency equipment.
- F. No permitted or permissible use shall be conducted in any manner which would render it noxious or otherwise offensive by reason of dust, refuse matter, odor, smoke, gas fumes, noise, vibration or glare from the permitted use.
- G. No detonation of fireworks or explosives is allowed in the LU-Limited Use Overlay Zone.
- H. Whenever it cannot be decided by reasonable observation that a performance standard is being met, it shall be the responsibility of the operator of the use to supply evidence or engineering data to support the contention a standard is being met. The standards are being designed, except when referring to other codes or regulations, to be judged by ordinary human senses and not by the minute detail of scientific quality

instruments. Until such evidence or engineering data are supplied and proves to be convincing, the judgement of the planning director shall be the determining factor.

Section 6. Plan Review:

Construction plans and plot maps for all permitted and conditional uses in the LU-Limited Use Overlay Zone must be submitted for review to the County Planning Department 30 days prior to construction.

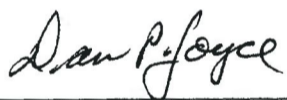
Section 7. Compliance With State and Federal Regulations:

All permitted non-farm uses allowed in the LU-Limited Use Overlay shall meet all applicable standards and regulations of any county, state or federal agency having appropriate regulatory jurisdiction. Prior to issuance of a zoning permit for all permitted non-farm uses, evidence shall be submitted to the planning department indicating the proposed activity has been approved by all appropriate regulatory agencies.

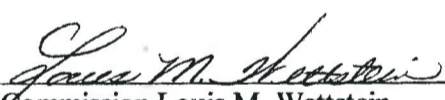
Section 8. Effective Date:

This ordinance shall take effect on the date of adoption.

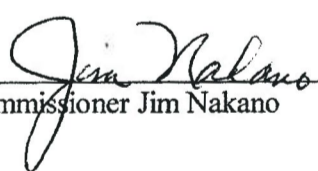
ADOPTED this 20 day of June, 2007



Judge Dan P. Joyce



Commission Louis M. Wettstein



Commissioner Jim Nakano

ATTEST:


Kim Mason

Land in Malheur County, Oregon as follows:

In Twp. 16 S., R. 43 E., W.M.: (3.92 acres)

Sec 9: A parcel of land in the SW1/4 described as follows:

Beginning at the Northwest corner of said SW1/4;
thence Southerly along the West boundary of said SW1/4 a distance of 1,503 feet
to the Point of Beginning;
thence East 150 feet;
thence Southerly parallel with the West boundary of said SW1/4 a distance of
1137 feet;
thence West 150 feet to the West boundary of said SW1/4;
thence Northerly along said West boundary a distance of 1137 feet more or less to
the Point of Beginning.

EXHIBIT # 1

MALHEUR COUNTY

INSTRUMENT NO. 2007-4696
Page 16 of 45 Pages

APPLICATION FOR INDUSTRIAL OVERLAY ZONE

Planning Department
Malheur County, Oregon

Class of application: Goal 3 Exception: Zone Change Application No.: 2006-10-021

Parcel Identification:
Tax Lot No. 900 (formerly 2000)(Map 16 S
4309, Reference No. 5913)
Section: 9
Twp: 16 S
Range: 43 E., W.M.

BACKGROUND INFORMATION

1. **Owner's Name:** William D. Heid & Rochelle M. Heid (Heid)

Street Address: 5070 S Road K City: Vale State: Oregon Zip: 97918

Phone: (541) 473 - 3324

2. **Owner's representative (if other than owner)**

Name: Bruce A. Lawson

Street Address: 2765 14th Avenue West City: Jamieson State: OR Zip: 97909

Phone: (541) 473 - 2717

Cellular: (541) 881 - 7778

Interest in property: Owners nephew by marriage/ operates home business on adjacent tax lot
#1604

Representative or Agent for contact purposes:

Name: R. David Butler II

Street Address: C/O Butler & Looney, PC 292 Main Street So. PO Box 430 City: Vale State:
OR Zip: 97918

Phone: (541) 473 - 3111

EXHIBIT # 2

- 3. **Date property was acquired by present owner:** 06-19-2000
- 4. **Directions to the site involved:** John Day Highway (Highway 26) to 14th Avenue West. Past 1st residence on the left. Hay stack yard and three (3) portable storage containers currently located on TL 900.
- 5. **Zone classification:** ERU
- 6. **Land area:** Of total ownership: 79.09 acres
Of proposal: a parcel 800' X 100' = 80,000 square feet (1.836544 acres)
- 7. **Proposed use(s) of the site and facilities:** Applicant proposes the following uses:
 - a) No residence or outbuildings are currently located on TL 900. The site is currently used to store hay in stacks and will remain a stack yard.
 - b) Applicant proposes use of the site (1.836544 acres) for the following:
 - i) Placement of portable storage containers retrofitted to meet Bureau of Alcohol Tobacco and Firearms (BATF) specifications to use the containers as storage magazines for fireworks and explosives.
 - ii) Applicant may wish to construct a shed or small warehouse upon the site at some future time.
 - iii) Applicant foresees installing security fencing about a portion of the perimeter of the site.
 - iv) Applicant will use the site for receiving fireworks and explosives, transferring the product into on site magazines, sorting and storage of product, staging product (preparation of fireworks and product for shipment to shows and displays), and offloading the product into transport vehicles.
 - v) Applicant may use the site for training purposes related to handling of product, proper storage and transport.
 - c) Surrounding farm grounds: The lands surrounding TL 900 shall continue to be farmed. Applicant's past home occupation uses have not to date resulted in any interference in the daily farming operations of surrounding parcels.

8. Current use(s) of the site and facilities:

a) TL 900 is owned and farmed by Bill Heid who stacks baled alfalfa hay on the property. A portion of TL 900 is under center pivot irrigation (hay production) The balance of TL 900 is not farmed. A private gravel road crosses a portion of TL 900. Applicant envisions locating his magazines south of the gravel roadway, and surrounding the magazines with a berm/ fence combination. Applicant may construct a shed to the north of the gravel roadway for equipment storage. Refer to Exhibit "A" for location of the gravel roadway in relation to the proposed site. Applicant's current use of TL 1604 (adjoining parcel) does not interfere in the daily farming operations of TL 900. Applicant has three (3) portable metal storage containers retrofitted into BATF approved magazines located on TL 900. BATF has approved their placement. No threat has been identified by BATF between the magazines and the hay stack yards.

9. Location of nearby features of interest (canal, bluff, airstrip, etc.): Location of nearby features of interest includes the John Day Highway and Main Canal as depicted in Exhibit "A".

10. Surrounding uses of land and facilities (N., S., E., W.): Lands located to the north, east, south, and west of TL 900 are used predominantly in agriculture including rangelands and cultivated farm lands. Exhibit "B" depicts location of surrounding residences which are predominantly associated with farming operations.

11. Applicant's Home Occupation: Applicant currently operates a home occupation on TL 1604 approved April 22nd, 2004 (Conditional Use # 2004-4-22-1) which was further modified by variance allowing the applicant to place up to five (5) more BATF approved magazines upon the property (Planning Dept. file # 2005-08-033). History leading to these actions is as follows: Applicant operated a blasting business, Homeland Explosives, performing stump and rock removal and blasting work. Work has been performed by the Applicant for Daniel Tanner, Ed Heid, Brian Carmichael, and the Vale Rodeo Board (surface charge). In order to perform blasting work, the Applicant had to acquire a State of Oregon explosives license. The Applicant completed the testing in LaGrande, Oregon, and received license no. 10577, valid 03-24-2003 through 03-24-2006 (subsequently renewed). For the Applicant to store either low-x or hi-x explosives on his property, the Applicant was required to secure approved magazines which were

inspected by the Federal Bureau of Alcohol, Tobacco and Firearms. Applicant's magazines (Type II magazine hi-x and Type IV magazine low-x) were rigorously inspected and the Applicant was approved and licensed to store explosives. Applicant petitioned for a home occupation designation.

The Applicant's business was incorporated in 2005: Homeland Fireworks, Inc. Applicant continues providing blasting work, and has expanded into fireworks importing, storage and displays. Applicant's current home occupation may be viewed as exceeding the scope of the Malheur County Ordinance 6-6-8-6.

The Applicant further desires to expand capacity of fireworks storage as the applicant is limited to five (5) BATF approved magazines. Applicant envisions additional purchases of container shipments of fireworks directly from the manufacturer, importation of those containers to the site, separation of the product by shell size and display type, and the requirement of additional magazines to stage and store product before shipping. This will require the Applicant to have more than five (5) BATF approved magazines on site. Applicant has prepared a business plan for Homeland Fireworks, Inc further detailing the history and growth of his business venture, which is attached hereto as Exhibit "C".

The property owner, William D. Heid, has monitored Applicant's use of TL 1604 and concurs with this application for an Industrial Overlay Zone.

THE EXCEPTIONS PROCESS:

A. The evaluation of this application involves three steps. In order to approve this application the County must 1) Justify an Exception to Statewide Planning Goals 3; 2) demonstrate compliance with the applicable goals and policies of the Malheur County Comprehensive Plan (CP); and 3) demonstrate compliance with the criteria for a zone change.

Applicant proposes the following findings of fact in consideration of these land use Goals, and applicable sections of the CP.

1. Consideration of an Exception: The subject property has been designated agricultural (ERU) on the CP map. In order to change the CP designation and the zone to anything other than Agriculture, it is necessary to take an Exception to Statewide Land Use Goal 3 under the procedure described in Oregon Administrative Rules (OAR) 660, Division 4.

A. Goal 3 Exception: Statewide Planning Goal 3 defines agricultural land as "...land of predominantly Class I, II, III and IV soils...as identified in the Soil Capability Classification System of the United States Soil Conservation Service, and other lands which are suitable for farm use taking into consideration soil fertility, suitability for grazing, climatic conditions, existing and future availability of water for farm irrigation purposes, existing land-use patterns, technological and energy inputs required, or accepted farming practices." The Goal also provides for applying the "Agriculture" designation to lands in other classes which are necessary to permit farm practices to be undertaken on adjacent or nearby lands. Agricultural land does not include land within an acknowledged urban growth boundary or land within acknowledged exception areas.

Review of the Soil Survey for Malheur County, Oregon - Northeastern Part, prepared by the Natural Resources Conservation Service. Based on this document, the soil types cannot be determined as the subject site lies beyond the survey boundaries. Refer to Exhibit "D". The current owner (Heid) has owned the subject property since 06-19-2000. The Applicant is also familiar with the property and proposed site and asserts that the site is described as follows;

- i) Un-irrigated ground;
- ii) Shallow and rocky in nature / likely a class VI or VII soil;
- iii) Has not been used for crop production in recent history, if ever;
- iv) More suitable for a hay stack yard use.

B. In summary, the entire property consists of soils that marginally, if at all, meet the definition of Agricultural Land. However, such lands comprise only a total of 1.5% of all agricultural lands found in Malheur County, Oregon. Based on the CP map designation of the property as Agriculture and the language of Statewide Planning Goal 2, part II, an exception to Goal 3 is required.

1. Exceptions Process: Under Oregon Administrative Rule 660, Division 4, three avenues are available for claiming an exception:

- A. OAR 660-04-020 and OAR 660-04-022: "Reason exceptions" under Goal, Part II(c);
- B. OAR 660-04-025; Land physically developed to other uses; and
- C. OAR 660-04-028; land irrevocably committed to other uses.

The Applicant asserts that a "Reasons Exception" basis exists for granting the Industrial Overlay Zone. Reasons Exception (OAR 660-004-020 and OAR 660-004-022): An exception under this provision must demonstrate the following:

(OAR 660-004-0022 (3)): Rural Industrial Development: For the siting of industrial development on resource land outside an urban growth boundary, appropriate reasons and facts include, but are not limited to, the following:

- (a) The use is significantly dependent upon a unique resource located on agricultural or forest land. Examples of such resources and resource sites include geothermal wells, mineral or aggregate deposits, water reservoirs, natural features, or river or ocean ports; or
- (b) The use cannot be located inside an urban growth boundary due to impacts that are hazardous or incompatible in densely populated areas; or

- (c) The use would have a significant comparative advantage due to its location (e.g., near existing industrial activity, an energy facility, or products available from other rural activities), which would benefit the county economy and cause only minimal loss of productive land resources. Reasons for such a decision should include a discussion of the lost resource productivity and values in relation to the county's gain from the industrial use, and the specific transportation and resource advantages which support the decision.

The Applicant advocates that sub paragraph (b) - The use cannot be located inside an urban growth boundary due to impacts that are hazardous or incompatible in densely populated areas is most applicable to this application for an Industrial Overlay Zone. The Applicant will not address the other exceptions basis, land physically developed to other uses or land irrevocably committed to other uses, as these basis are inapplicable.

ANALYSIS AND FINDINGS OF FACT SUPPORTING INDUSTRIAL OVERLAY ZONE

- a. **The characteristics of the exception area:** As has been previously mentioned, TL 900 consists of 79.09 acres. The Applicant has designated a site of 1.836544 acres, consisting of a lot 800' X 100', depicted in Exhibit "E". The relationship of the site to TL 2000 and surrounding parcels is depicted (not to scale) in Exhibit "F". Topography of the site, TL 900, and surrounding parcels is visually depicted in the attached photographs, Exhibits "G" through "O".
- b. Upon inquiry by the Applicant and /or counsel for the Applicant, the following have been determined:
 - 1) The subject property has not been designated as needed for open spaces;
 - 2) The subject property has not been designated as an energy source site;
 - 3) The subject property has not been designated as critical to wild life habitat;
 - 4) The subject property has not been identified as ecologically significant to the natural area;
 - 5) The subject property has not been identified as offering outstanding scenic value to the public at large;
 - 6) The subject property is not designated a wilderness area;
 - 7) The subject property lacks either historic or cultural significance;
 - 8) The subject property is devoid of recreational trails which are significant for public use;
 - 9) The subject property does not contain a negative history of land use;
 - 10) The subject property has not been identified as providing significant recreational value to the public at large;
 - 11) Natural or manmade hazards, topographic restraints, soil non-suitability for development: None known the Applicant.
- b. **The characteristics of adjacent lands:** All Lands adjacent to the subject property are zoned either EFU or ERU. Adjacent land uses and characteristics are visually in the attached photographs, Exhibits "G" through "O". Single family dwelling houses associated with farm practices are scattered through out the area. It is

significant that no dwelling houses (other than the house the Applicant occupies in adjacent TL 1604) are located close to TL 900. Applicants residence on TL 1604 is located a sufficient distance from the proposed site that BATF has approved Applicant's site as located an appropriately safe distance.

In terms of soil types and topography, all of the adjacent lands surrounding subject parcels have similar soil types and topography. Agricultural uses in the surrounding area consist primarily of hay and forage crop production. It is significant to note that the land owner, Heid, also owns substantial parcels surrounding TL 900.

Residential growth patterns for the surrounding area indicate a very slow growth and development rate. Growth immediately adjacent to the site is limited by the fact the Heid owns much of the surrounding property.

b. **The relationship between the exception area and the lands adjacent to it:**

Regarding ownership, there are no property owners adjacent to the subject property which claims an adverse ownership interest in the subject property itself. The subject property is farmed and used in conjunction with adjacent surrounding properties: Heid stacks alfalfa hay upon TL 900. Access to the subject property is made via the existing county road (14th Avenue West). There is currently a private gravel road off of 14th Avenue West and traversing TL 2000. The Applicant intends to use this gravel road to access the site. Should the Applicant elect to fence the site, then the Applicant will have to make changes in the gravel road to by-pass the fenced site and circumvent it. The private gravel road exists only for farm use on TL 900. Placement of the site as depicted in Exhibit "A" will not hinder or impede farm practices. Adjacent lands are generally used for agricultural purposes consistent with Goal 3.

d. **The other relevant factors (OAR 660-04-028(6)).** This section of the OAR requires findings of fact for an exception to address seven factors. Each of those factors is addressed below:

1. The first factor refers to existing adjacent uses.

This factor has already been discussed under above under characteristics of adjacent lands.

2. The second factor refers to existing public facilities and services.

The subject property and surrounding areas are not served or otherwise dependent on public water or sewage facilities. Domestic water must be provided by individual wells, sewage disposal is by means of septic tanks and drainfields. Transportation services include a paved County Road (14th Avenue West) which connects to US Highway 26.

3. The third factor refers to parcel size and ownership patterns of the exception area and adjacent lands. Parcel sizes surrounding the subject property are visually depicted in attached Exhibit "P". Parcel sizes range from small parcels 2.3 acres (TL 1702) to 360

acres (TL 2100). Smaller parcels are associated with single family dwellings while the larger parcels are associated with farm and ranching operations.

4. The fourth factor refers to neighborhood and regional characteristics.

There is no clearly delineated "Neighborhood or "Region" near or surrounding the site. Exhibit "B" depicts surrounding residences. Exhibit "A" depicts parcels located in conjunction with the proposed site. The proposed site (See Exhibit "A") is surrounded by ERU and EFU lands. Most residences are not visible from the site due to the rolling topography. See Photos (Exhibits "G" through "O"). In regards to "Regional" characteristics, the subject property is most closely located to the City of Jamieson.

5. The fifth factor refers to natural or man-made features or other impediments separating the site from adjacent resource lands.

The subject property is physically separated from adjacent lands due to the fact that the property owners, William D. Heid & Rochelle M. Heid (Heid), own a substantial portion of lands surrounding the site itself. The Site is physically located south of 14th Avenue West. A private gravel road leads to the site. The road may be seen in Exhibits "M" through "O". Natural rolling topography separates the site from other man made structures, including residences. Exhibits "I" through "O" depict the distances from the site to other structures. The closest man made feature would be the owners' hay stack yard, located west of the currently placed magazines (as seen in Exhibit "G").

6. The sixth factor refers to physical development according to OAR 660-004-025. The Applicant is seeking an Industrial Overlay Zone under the concept of a reasons exception (OAR 660-004-0018(3)(a)). Thus, a discussion of the physical development, either of the site itself, or of the surrounding lands, is less applicable to this Application. However, the applicant notes that development (magazine placement) has occurred on TL 1604 (placement of Applicant's hi-explosive and lo-explosive magazines). Further, the Applicant has placed the magazines depicted in Exhibits "G" and "H" on TL 900.

The Applicant seeks to place an Industrial Overlay Zone designation on the site shown in Exhibit "A" and then place all magazines, storage facilities, accessory buildings and equipment within the boundaries of the site. This will result in Applicant's magazines and equipment being consolidated into a single site, rather than having the magazines being located on multiple parcels. Consolidation into a single site will create an economy in cost savings for the Applicant.

7. The last factor refers to other relevant factors which have been identified, or are being considered by the Applicant at this time.
- a) Applicant receives semi-truck loads of product periodically through out the year. The proposed site is located less than one (1) mile is distance off of State Highway 26. An existing private gravel road leads to the proposed site which is of sufficient structure to accommodate semi-truck traffic. The gravel road provides an acceptable year round surface (The land owners move alfalfa hay into and out of the stack yard adjacent to Applicant's selected site).

- b) One of the greatest features of the selected site is the remoteness of the site from residences and industrial parks. The Applicant has made inquiry into the availability of property currently zoned for industrial uses. While such property currently exists in Malheur County, the owners of the industrial property, or the tenants currently located on the industrial property express reticence to place or locate Applicant's business therein. Attached as Exhibit "Q" is a letter authored by a local realtor familiar with industrial grounds available for development in Malheur County. While it is possible to locate the Applicant's business in industrial zoned property, the substantial insurance premiums which would be imposed upon the Applicant, essentially to protect surrounding industrial users, significantly impact the Applicant's business.

Based upon these reasons and conclusions, the Applicant finds a reasons exception exists supporting the requested Industrial Overlay Zone.

- 8. **Comprehensive Plan Policies:** The comprehensive plan map change is subject to an evaluation of the agricultural and rural elements of the comprehensive plan. Applicant will not address urbanization impacts in this Application as the Application does not involve adding additional dwelling structures into the selected site. The Applicant may at some future date construct a small office building upon the site. These elements of the comprehensive plan must be evaluated to determine which policies are most appropriate and applicable to the subject property. The Applicant has reviewed the comprehensive plan with respect to this application, proposes the following Findings:

- A. **Applicable Agricultural Policies:** Policy 1 of Goal three (3): Agricultural lands of the comprehensive plan identifies those areas designated as agricultural:
"Public and private land classified by the U.S. Soil Conservation Service as being in Capability Classes I through VI, as well as other lands determined to be suitable as needed for farm use, are considered to be agricultural lands."

The entire site, as well as TL 900, sits beyond the soils classification survey. See: Soil Survey for Malheur County, Oregon - Northeastern Part, prepared by the Natural Resources Conservation Service. Based on this document, the soil types cannot be determined as the subject site lies beyond the survey boundaries. Refer to Exhibit "D". The current owner (Heid) has owned the subject property since 06-19-2000. The Applicant is also familiar with the property and proposed site and asserts that the site soils and uses include the following;

- i. Un-irrigated ground;
- ii. Shallow and rocky in nature / likely a class VI or VII soil;
- iii. Has not been used for crop production in recent history, if ever;
- iv. Suitable for a hay stack yard use.

Applicant's requested Industrial Overlay Zone impacts a parcel 800' X 100' = 80,000 square feet (1.836544 acres). The site itself is not farmed. See photographs (Exhibits "G" through "O"). The Owners have no future plans to place the site into farm crop production.

B. Areas Generally in Parcels of Twenty (20) Acres or Larger: There are several ways to define the "area" under consideration. The area of consideration could be a certain radius of properties around the subject property in the same zoning district, which in this case is EFU and ERU zones. Based upon a radius of one (1) mile (Similar to the Sweeten Test) the "Area of consideration" does contain parcels of or exceeding twenty (20) acres. See Exhibit "R". The majority of parcels located surrounding the site exceed twenty (20) acres in size. The only notable parcels less than twenty (20) acres include:

- i) TL 1500 to the NW (10.00 acres)
- ii) TL 1702 to the NE (2.3 acres)
- iii) TL 1800 to the NE (7.80 acres)
- iv) TL 1602 to the N (1.43 acres)

C. Lands Having the Highest Agricultural Capabilities: Goal three (3) Policy two (2), Lands having the highest agricultural capabilities, are to be given the greatest protection - Class I having the highest Capability and Class VI having the lowest Capability. As previously set forth, the subject property is beyond the classification scheme. Refer to paragraph 8(A) above.

D. Storage Capacity for Irrigation Water: Goal three (3) Policy seven (7): The County is to seek methods of increasing storage capacity for irrigation water in the County. The site has no water right or water storage facilities and has never had such. The present Agricultural designation is not consistent with this factor for the proposed exception area.

E. Non-farm Dwelling(s) in an Agricultural Zone: Goal three (3) Policy ten (10): Non-farm dwellings in agricultural zones will be allowed where:

- 1. It is compatible with established or possible future farm uses;
- 2. It will not now, or in the future, interfere with established farm practices;
- 3. It will not alter the stability of the over all land use pattern of the area;
- 4. It is situation an land generally unsuitable for the production of farm crops and livestock.

The Applicant is not seeking to place a non-farm dwelling on the site under consideration. As indicated, placement of magazines, and possibly the construction of an office building are being requested as approved uses by the Applicant within the Industrial Overlay Zone. Further discussion of the impact of a non-farm dwelling is not necessary.

Based upon the above proposed Findings, the characteristics of the subject property are consistent with the applicable Agricultural Comprehensive Plan Goals. The Agricultural plan designation is appropriate when applied to the subject property. However, location of Applicant's business and consideration of the risk to surrounding industrial uses is paramount when compared to the characteristics of the site. Applicant asserts that the nature and quality of the agricultural ground depicted in Exhibit "A" is of sufficiently low quality that the impact upon farm practices and the Agricultural Comprehensive Plan is outweighed by the benefit of overlaying an Industrial Zone on the site and permitting Applicant's business to operate within the site.

9. Applicable Rural (Urbanization) Policies:

- A. Goal fourteen (14) of the Malheur County Comprehensive Plan sets forth the goal: "To provide for an orderly and efficient transition from rural to urban land use." The Comprehensive Plan envisioned a date and time in which areas surrounding cities in Malheur County would be viewed as transition areas in which an "efficient transition from rural to urban land use" would occur. Applicant is requesting an Industrial Overlay Zone be located upon 1.836544 acres of ground currently zoned ERU. Applicant is not seeking to place further dwelling structures within the site. The Applicant asserts that urbanization policies will not be impacted by the requested action.

Based upon the above Findings, the characteristics of the subject property are consistent with rural and urbanization policies. Applicant's requested action is appropriate.

Dated this 9 day of October, 2006.


Bruce A. Lawson, Applicant.

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MALHEUR COUNTY

ADDENDUM TO

APPLICATION FOR INDUSTRIAL OVERLAY ZONE

Planning Department

Malheur County, Oregon

Class of application: Goal 3 Exception: Zone Change Application No.: 2006-10-021

Hearing date: December 14, 2006 at 7:30 p.m.

Parcel Identification:

Tax Lot No. 900 (formerly 2000)(Map 16 S
4309, Reference No. 5913)

Section: 9

Twp: 16 S

Range: 43 E., W.M.

INSTRUMENT NO. 2007-4696
Page 17 of 45 Pages

BACKGROUND INFORMATION

1. **Owner's Name:** William D. Heid & Rochelle M. Heid (Heid)

Street Address: 5070 S Road K City: Vale State: Oregon Zip: 97918

Phone: (541) 473 - 3324

2. **Owner's representative (if other than owner)**

Name: Bruce A. Lawson

Street Address: 2765 14th Avenue West City: Jamieson State: OR Zip: 97909

Phone: (541) 473 - 2717

Cellular: (541) 881 - 7778

Interest in property: Owners nephew by marriage/ operates home business on adjacent tax lot
#1604

Representative or Agent for contact purposes:

Name: R. David Butler II

Street Address: C/O Butler & Looney, PC 292 Main Street So. PO Box 430 City: Vale State:

OR Zip: 97918

Phone: (541) 473 - 3111

DESCRIPTION OF HOMELAND FIREWORKS BUSINESS AND ASSOCIATED

ACTIVITIES:

The Applicant seeks approval of an Industrial Overlay Zone for a parcel 800' X 100' = 80,000 square feet (1.836544 acres) to be applied over 79.09 acres of land currently zoned ERU.

Proposed Findings of Fact: Applicant operates Homeland Fireworks under a Home Occupation permit (as approved April 22nd, 2004: Conditional Use # 2004-4-22-1, which was further modified by variance allowing the applicant to place up to five (5) more Bureau of Alcohol, Tobacco, Firearms & Explosives (BATF & E) approved magazines upon the property. See Planning Dept. file # 2005-08-033.) The applicant seeks to locate magazines retrofitted according to BATF & E guidelines for storage of fireworks within the parcel identified in Exhibit "A" of the Application filed October 10, 2006. Currently, the Applicant stores magazines retrofitted or manufactured for the storage of high explosives (referred to as "Hi-Ex" such as plastic explosives and dynamite) and low explosives (referred to as "Lo-Ex" such as blasting caps) near his residence located at 2765 14th Avenue West City: Jamieson State: OR Zip: 97909. Upon approval of an industrial overlay zone, the Applicant would make the following changes:

- a) It is envisioned that the Applicant's Home Occupation permit would be terminated by Malheur County as Applicant's business, Homeland Fireworks, would exceed the permitted activities under Malheur County Code.
- b) The Applicant intends to move from the residence located at 2765 14th Avenue West, Jamieson, OR, to another residence owned by Bill Heid and located at 5235 John Day Highway. This new residence has a shop building which would be useful to the Applicant.
- c) Applicant's Lo-Ex magazine will then be placed within the industrial overlay zone site, as will all retrofitted lo-ex magazines designed for storage. Currently the Applicant has three (3) such retrofitted magazines.
- d) The Applicant has the option of placing his hi-ex magazine either within the industrial overlay zone site, or moving the magazine and relocating it to the new residence at 5235 John Day Highway. Placing the hi-ex magazine at Applicant's new residence permits the Applicant to better monitor this magazine. Placing the hi-ex magazine within the

perimeter of the industrial overlay zone site shall reduce the number of storage magazines the Applicant may locate within the site as BATF & E requires a minimum distance of 400 yards between the hi-ex magazine and any lo-ex magazines. Due to the selected size of the site, placement of a hi-ex magazine within the proposed site would reduce the number of potential lo-ex magazines which could be located within the proposed site by anywhere from 2/3 to 3/4. The Applicant would prefer to not place the hi-ex magazine within the proposed site.

- e) Applicant anticipates construction of a storage shed within the proposed site for storage of equipment, electronics, racks, trailers and the like.
- f) The Applicant will continue to receive telephone calls at his residential number, or via his cellular phone. No other business activities will occur at the Applicant's residence. Thus, there will remain no further need for the home occupation permit.

Under Applicant's current home occupation permit, the Applicant's business includes the following activities:

- 1) Placement of both hi-ex and lo-ex magazines on Applicant's property (2765 14th Avenue West, Jamieson OR 97909);
- 2) Storage of fireworks in BATF & E approved lo-ex magazines (retrofitted 40' steel containers). Currently the Applicant has three (3) such containers on site and is permitted to have up to five (5) storage containers;
- 3) Staging for a shoot: including sorting and preparing fireworks for shipping to a shoot site;
- 4) Construction of equipment used for shoot: racks and tubes, electronic equipment, etc.
- 5) Telephone use incidental with the business;
- 6) Receipt and shipping of "product" including fireworks, and explosives incidental to Applicant's blasting business.

These activities, with the exception of telephone usage incidental to the business, will primarily occur at the proposed site. The Applicant intends to install a business telephone line into the new residence and maintain a private line for family use.

Currently, the Applicant holds various permits and licenses either under his name as an

individual, or under the business name of Homeland Fireworks. The Applicant intends to transfer all licenses and permits under the business name.

DESCRIPTION OF "MAGAZINES" USED IN APPLICANT'S BUSINESS:

The Applicant uses "magazines" to store both hi-ex and lo-ex products.

Proposed Findings of Fact: Applicant's magazines must be constructed to rigid specifications set forth by BATF & E. Attached and hereby incorporated as Exhibit "A" are the BATF & E requirements applicable to Applicant's magazines.

LOCATION OF SIMILAR BUSINESS FACILITIES WITHIN THE STATE OF OREGON

Proposed Findings of Fact: The Applicant is licensed to engage in the following activities associated with blasting and pyrotechnics:

- a) Storage of product (explosives and fireworks) of up to 190,000 pounds;
- b) Purchase of product;
- c) Possession and sale of product;
- d) Importing of product;
- e) Use of product: detonation and display.

Only one other business entity exists within the State of Oregon which has similar licensing: Western Fireworks located at Canby, Oregon. Attached as Exhibit "B" is an aerial photograph depicting the property of Western Fireworks. The Applicant is advised that Western's business is located upon a tract of land approximating 100 acres in size. Scattered over that parcel are the following buildings:

- 1) Two (2) lo-ex magazines for fireworks storage. Total permitted storage capacity in pounds is believed to be approximately 100,000 pounds;
- 2) Three (3) shops for equipment storage;
- 3) A private road 300' to 400' in length separates the magazines from the shops. Separation of the shops from the magazines is not required.

BATF & E has established the minimum distances between storage magazines and inhabited buildings, public highways, passenger railways and the minimum distances between magazines depending upon whether they are barricaded or not. Attached as Exhibit "C" is the BATF & E

chart setting forth such requirements. Applicant's proposed site meets ALL BATF & E requirements with respect to storage capacity (Applicant is licensed to store up to 190,000 pounds of lo-ex product) in relationship to inhabited buildings, public highways, and passenger railways. Thus, Applicant's proposed site is ideally located and situated. It is believed that Western's site limits the amount of product that Western may store due to proximity to inhabited buildings, public highways and passenger railways. Consequently, the Applicant has the potential to store nearly twice the amount of product that Western is licensed to store.

BUSINESS RELATIONSHIP BETWEEN THE APPLICANT AND THE PROPERTY

OWNER

Proposed Finding of Fact: The property owners, William D. Heid & Rochelle M. Heid (Heid), are uncle and aunt by marriage to the Applicant. Heid has no business involvement with Homeland Fireworks nor any business involvement with Applicant's blasting business. Heid owns the property where the Applicant currently resides and operates his business under the home occupation permit. Heid owns the residence which the Applicant intends to move into, as well as the property upon which the residence is located. Heid owns the proposed site over which the Applicant seeks to impose an industrial overlay zone (Tax Lot No. 900). The Applicant helps Heid with Heid's farm work. The Applicant has negotiated with Heid to lease the proposed site from Heid. Further agreements between the Applicant and Heid include the provision that if Homeland Fireworks becomes defunct or is sold and Applicant does not retain a majority ownership interest in the business, then the lease terminates and the land reverts back to Heid's full control. Consequently, if Homeland Fireworks is sold and the Applicant does not retain a majority ownership interest in the business, then the business assets must be removed from the proposed site and re-located to another site. It is further envisioned by the Applicant that the industrial overlay zone would in such instance terminate and the ERU zoning once more be applicable to the site.

INSTRUMENT NO. 2007
Page 21 of 45 Pages
-46910

ANALYSIS UNDER OAR 660-004-0022(3): Rural Industrial Growth:

For the siting of industrial development on resource land outside an urban growth boundary, appropriate reasons and facts include, but are not limited to, the following:

- (a) The use is significantly dependent upon a unique resource located on agricultural or forest land. Examples of such resources and resource sites include geothermal wells, mineral or aggregate deposits, water reservoirs, natural features, or river or ocean ports.

Proposed Finding of Fact: Applicant's proposed use, which includes primarily the storage of fireworks (Applicant is permitted to store up to 190,000 pounds of lo-ex) is not dependent upon a unique resource located on agricultural or forest land. However, the unique resource offered by the proposed site is distance from the site to inhabited buildings, public highways and passenger railways. Applicant's business is incompatible with populated areas. BATF & E has established minimum distances, based in part upon storage capacity, between magazines and inhabited buildings, public highways and passenger railways. Refer to exhibit "C". The Applicant must locate his magazines no less than 2,010 feet from inhabited buildings of any nature or kind. Inhabited buildings are defined by BATF & E to include "any building regularly occupied in whole or in part as a habitation for human beings, or any church, schoolhouse, railroad station, store or any other structure where people are accustomed to assemble, except any building occupied in connection with the manufacture, transportation, storage or use of explosive materials."

Source: Federal Explosives Law and Regulations published by BATF & E: 2000 (ATF P 5400.7 09/00).

Or (b) The use cannot be located inside an urban growth boundary due to impacts that are hazardous or incompatible in densely populated areas.

Proposed Finding of Fact: As set forth above, Applicant's business activities are incompatible with populated areas. In Applicant's original Application for Industrial Overlay Zone, the Applicant identified only four (4) other parcels currently zoned "Industrial" in Malheur

County, Oregon. See: Exhibit "Q" and attachments thereto. These properties are all located too close to inhabited buildings as defined by BATF & E, or to public highways or railways. As such, Applicant's business, which must include storage of significant quantities of explosives, cannot be located inside an urban growth boundary due to impacts that are hazardous or incompatible in densely populated areas. Applicant's business does not present impacts or hazards, excepting explosion possibility, to populated areas. The Applicant does not manufacture explosives, fireworks, or pyrotechnic devices. However, the Applicant stores, and intends to store in greater quantity, explosives of both a high and low nature.

Or (c) The use would have a significant comparative advantage due to its location (e.g., near existing industrial activity, an energy facility, or products available from other rural activities), which would benefit the county economy and cause only minimal loss of productive resource lands. Reasons for such a decision should include a discussion of the lost resource productivity and values in relation to the county's gain from the industrial use, and the specific transportation and resource advantages which support the decision.

Proposed Finding of Fact: Applicant's selected site is advantageous due to its remoteness and lack of proximity to densely populated areas, inhabited buildings, public highways and passenger railways. However, this also has an impact upon the Applicant's business operation. The Applicant is now licensed to import container loads of fireworks directly from the manufacturing source in China and abroad. However, the Applicant's proposed site is located well inland. The Applicant has reviewed other west coast importer locations and they are typically more closely located to a sea port. The Applicant has studied transporting product (which will be shipped in metal containers) to his eastern Oregon site and has determined that the most economical method of transporting product includes;

- a) Product is shipped from the manufacturer in container via merchant vessel to the Port of Tacoma;
- b) Applicant's containers are then transported from the Port of Tacoma, after passing through customs, via rail carrier to a terminal located in Caldwell, Idaho;
- c) Applicant will then gather the containers in Caldwell, Idaho with flat bed tractor-trailer

semis for ultimate transportation to the Jamieson, Oregon site. The Applicant has compared various methods of product transportation and determined this approach to be the most economically feasible, and safest approach to the transportation issue. The Applicant makes it a goal of Homeland Fireworks to keep as much of his local business needs supplied within Malheur County as possible. Certain products are simply not available locally. As an example, the Applicant needs seven trailers custom built to hold shooting equipment and supplies. The Applicant determined that none of the local manufacturing companies had the equipment to build the trailers to his requirements and specifications. Thus, the work had to be done outside Malheur County, but could be completed within Oregon by another manufacturer which specializes in trailer construction.

The proposed site is currently zoned ERU. While zoned for range use, the site depicted in Exhibit "A" of the original application is not utilized for grazing, crop production or other farm related uses other than the owner, Heid, stacks hay near the site. Photographs showing in a panoramic fashion the site and surrounding lands are attached to the original Application as Exhibits "I" through "O". The Applicant has in place insurance which would cover any damage his business may cause to the owner's hay stack. Further out from the proposed site is located an irrigation pivot. However, it is located distant enough that Applicant's business poses no threat to the pivot or crops being produced under the pivot.

ANALYSIS UNDER OAR 660-004-0020: Goal 2, Part II(c): Exception Requirements:

If a jurisdiction determines there are reasons consistent with OAR 660-004-0022 to use resource lands for uses not allowed by the applicable Goal or to allow public facilities or services not allowed by the applicable Goal, the justification shall be set forth in the comprehensive plan as an exception.

(2) The four factors in Goal 2 Part II (c) required to be addressed when taking an exception to a Goal are:

(a) "Reasons justify why the state policy embodied in the applicable goals should not apply":

The exception shall set forth the facts and assumptions used as the basis for determining that a state policy embodied in a goal should not apply to specific properties or situations including the

amount of land for the use being planned and why the use requires a location on resource land.

Proposed Finding of Fact: Information contained in Applicant's original application, accompanied by supplemental information contained in this Addendum establishes the following:

i) The subject property is currently zoned ERU. However, the property is not used in traditional "range use" fashion. The property is unfenced and currently used as a hay stack yard (nearby to the proposed site).

ii) The soils are poor, do not have a water right and do not support a crop of sufficient value to economically justify range use.

iii) BATF & E has identified the site as ideal for storage of both hi-ex and lo-ex product due to:

a) Remoteness;

b) Distance from the proposed site to inhabited structures, highways and other infrastructure.

(b) "Area which does not require a new exception cannot reasonably accommodate the use":

(A) The exception shall indicate on a map or otherwise describe the location of possible alternative areas considered for the use, which do not require a new exception.

Proposed Finding of Fact: See information submitted in the original application, Exhibit "Q" and attachments, as well as information submitted infra.

The area for which the exception is taken shall be identified:

(B) To show why the particular site is justified, it is necessary to discuss why other areas which do not require a new exception cannot reasonably accommodate the proposed use. Economic factors can be considered along with other relevant factors in determining that the use cannot reasonably be accommodated in other areas.

Proposed Finding of Fact: See information submitted in the original application, as well as information submitted infra.

Under the alternative factor the following questions shall be addressed:

(i) Can the proposed use be reasonably accommodated on non-resource land that would not require an exception, including increasing the density of uses on non-resource

land? If not, why not?

Proposed Finding of Fact: See information submitted in the original application, as well as information submitted infra. Increasing the density of uses on non-resource land (lands zoned for light industrial uses) would place the Applicant's magazines closer to inhabited buildings, public highways and other infrastructure contrary to BATF & E regulations. Applicant's proposed site is desirable due to its remoteness, reducing the threat of damage should an explosion occur. Further, Applicant's site is not readily visible to the public, reducing the possibility of theft or the possibility of terrorist targeting of the site.

(ii) Can the proposed use be reasonable accommodated on resource land that is already irrevocably committed to non-resource uses, not allowed by the applicable Goal, including resource land in existing rural centers, or by increasing the density of uses on committed lands? If not, why not?

Proposed Finding of Fact: See information submitted in the original application, as well as information submitted infra. Increasing the density of uses on non-resource land (lands zoned for light industrial uses) would place the Applicant's magazines closer to inhabited buildings, public highways and other infrastructure contrary to BATF & E regulations. Applicant's proposed site is desirable due to its remoteness, reducing the threat of damage should an explosion occur. Further, Applicant's site is not readily visible to the public, reducing the possibility of theft or the possibility of terrorist targeting of the site. The Applicant has been unable in Malheur County to locate or identify resource land that is already irrevocably committed to non-resource uses, not allowed by the applicable Goal, including resource land in existing rural centers. Due to the uniqueness of Applicant's business, the Applicant advocates that location of his business on either resource, or non-resource lands is not appropriate, advisable, or permitted by State of Oregon or BATF & E regulations.

(iii) Can the proposed use be reasonably accommodated inside an urban growth boundary? If not, why not?

Proposed Finding of Fact: See information submitted in the original application, as well as information submitted infra. Placement of Applicant's business within an urban growth boundary

creates the risk that the Applicant's magazines would be located closer to inhabited buildings, public highways and other infrastructure contrary to BATF & E regulations. Applicant's proposed site is desirable due to its remoteness, reducing the threat of damage should an explosion occur. Further, Applicant's site is not readily visible to the public, reducing the possibility of theft or the possibility of terrorist targeting of the site. The Applicant has been unable in Malheur County to locate or identify resource land that is located within an urban growth boundary that will meet State of Oregon or BATF & E regulations. Due to the uniqueness of Applicant's business, the Applicant advocates that location of his business in an urban growth boundary is not appropriate, advisable, or permitted by State of Oregon or BATF & E regulations.

(iv) Can the proposed use be reasonably accommodated without the provision of a proposed public facility or service? If not, why not?

Proposed Finding of Fact: Applicant's business will not require Malheur County or the State of Oregon to provide public facilities or services specifically to the Applicant's business. The Applicant will use both State of Oregon and Malheur County roadways for transportation needs. The Applicant's site also envisions using private roadways for the final approach to the proposed site. No other impact upon State of Oregon or Malheur County resources has been identified by the Applicant and none have arisen since the Applicant began operating under a home occupation permit.

(C) This alternative areas standard can be met by a broad review of similar types of areas rather than a review of specific alternative sites. Initially, a local government adopting an exception need assess only whether those similar types of areas in the vicinity could not reasonably accommodate the proposed use, site specific comparisons are not required of a local government taking an exception, unless another party to the local proceeding can describe why there are specific sites that can more reasonably accommodate the proposed use. A detailed evaluation of specific alternative sites is thus not required unless such sites are specifically described during the local exceptions proceeding.

(1) The long-term environmental, economic, social and energy consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts are not significantly

more adverse than would typically result from the same proposal being located in other areas requiring a Goal exception. The exception shall describe the characteristics of each alternative areas considered by the jurisdiction for which an exception might be taken, the typical advantages and disadvantages of using the area for a use not allowed by the Goal, and the typical positive and negative consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts. A detailed evaluation of specific alternative sites is not required unless such sites are specifically described with facts to support the assertion that the sites have significantly fewer adverse impacts during the local exceptions proceeding. The exception shall include the reasons why the consequences of the use at the chosen site are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site. Such reasons shall include but are not limited to, the facts used to determine which resource land is least productive; the ability to sustain resource uses near the proposed use; and the long-term economic impact on the general area caused by irreversible removal of the land from the resource base. Other possible impacts include the effects of the proposed use on the water table, on the costs of improving roads and on the costs to special service districts.

Proposed Finding of Fact: See information submitted in the original application, as well as supplemental information submitted infra. The Applicant is seeking an industrial overlay zone over lands currently zoned ERU. As previously stated, should certain events occur, the industrial overlay zone designation would terminate and the zoning reverts back to ERU.

(2) The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts. The exception shall describe how the proposed use will be rendered compatible with adjacent land uses. The exception shall demonstrate that the proposed use is situated in such a manner as to be compatible with surrounding natural resources and resource management or production practices. Compatible is not intended as an absolute term meaning no interference or adverse impacts of any type with adjacent uses.

Proposed Finding of Fact: See information submitted in the original application, as well as supplemental information submitted infra. Both the Applicant and owner of the property under

consideration as the proposed site have insurance in effect should an "adverse impact" occur. The Applicant believes the primary potential "adverse impact" to be the threat of explosion. Applicant's liability insurance covers the current threat of damage should an explosion occur and the Applicant has verified the availability of further insurance coverage should this application for an industrial overlay zone be approved.

(3) If the exception involves more than one area for which the reasons and circumstances are the same, the areas may be considered as a group. Each of the areas shall be identified on a map or their location otherwise described, and keyed to the appropriate findings.

Proposed Finding of Fact: Applicant's request does not involve more than one area for which the reasons and circumstances are the same. As mentioned, the Applicant may elect to locate the hi-ex magazine at the new residential site located at 5235 John Day Highway. No other significant business activity is envisioned off of the proposed site.

(4) For the expansion of an unincorporated community defined under OAR 660-022-0010, or for an urban unincorporated community pursuant to OAR 660-022-0040(2). The exception requirements of subsections (2)(b), (c), and (d) of this rule are modified to also include the following:

(a) Prioritize land for expansion: First priority goes to exceptions lands in proximity to an unincorporated community boundary. Second priority goes to land designated as marginal land. Third priority goes to land designated in an acknowledged comprehensive plan for agriculture or forestry, or both. Higher priority is given to land of lower capability site class for agricultural land, or lower cubic foot site class for forest land.

Proposed Finding of Fact: Inapplicable.

(b) Land of lower priority described in subsection (a) of this section may be included is land of higher priority is inadequate to accommodate the use for any one of the following reasons:

(A) Specific types of identified land needs cannot be reasonably accommodated on higher priority land.

Proposed Finding of Fact: Inapplicable.

Or (B) Public facilities and services cannot reasonably be provided to the higher priority area due

to topographic or other physical constraints.

INSTRUMENT NO. 2007 - 4696
Page 30 of 45 Pages

Proposed Finding of Fact: Inapplicable.

Or (C) Maximum efficiency of land uses with the unincorporated community requires inclusion of lower priority land in order to provide public facilities and services to higher priority land.

Proposed Finding of Fact: Inapplicable.

INDUSTRIAL ZONING UNDER MALHEUR COUNTY CODE

Malheur County has established an M-1 Light Industrial Zone as identified as follows:

6-3H-1: PURPOSE: The M-1 Light Industrial Zone is intended to provide areas for industrial uses having minimal adverse environmental effects. Commercial activities compatible with industrial uses are allowed as conditional uses. This Article provides not only for the Planning Commission to attach special conditions to certain uses as delineated in Section 6-3H-3 of this Article that have a potentially detrimental effect on neighboring lands, but also for the Planning Commission to exercise review of planned permitted uses as delineated by Section 6-3H-2. (Refer to Section 6-3H-6 and Chapter 5 of this Title.) (Ord. 86, 12-7-1993)

6-3H-2: PERMITTED USES: The following uses may be permitted outright in an M-1 Zone:

- A. Warehousing and storage, excluding storage of hazardous products.
- B. Wholesale distribution and sales outlets.
- C. Service stations.
- D. Machinery repair facilities.
- E. Electronic assembly plants.
- F. Utility facilities necessary for public services, excluding waste disposal facilities.
- G. Radio or television towers and related facilities.
- H. Freight depots and trucking freight terminals.
- I. Contractors or building materials businesses.
- J. Residential uses in conjunction with commercial and industrial uses. (The intent is to give owners, operators or security personnel of a commercial or industrial enterprise the opportunity to live on or near the location of their business.)
- K. General retail sales and restaurants enclosed within a building, the floor area of which does not exceed one thousand five hundred (1,500) square feet. (Ord. 86, 12-7-1993)

6-3H-3: CONDITIONAL USES: The following uses and their accessory uses may be established in an M-1 Zone when authorized in accordance with Chapter 6 of this Title:

- A. All conditional and permitted uses allowed in a C-1 Zone that are compatible with light industrial uses.
- B. Food processing.
- C. Manufacturing, processing, packaging, repair and storage of goods or products not in conflict with other provisions of this Article.

- D. Small petroleum storage or distribution facilities.
- E. Governmental structures and uses for the promotion of the public health, safety or welfare.
- F. Uses associated with the storage or disposal of explosives, chemical products, chemical wastes or radioactive wastes.
- G. Other uses not listed as conditional or permitted but determined to be compatible with light industrial uses and in accordance with the Comprehensive Plan. (Ord. 86, 12-7-1993)
- H. Recreational vehicle park. (Ord., 11-8-1994)

Proposed Finding of Fact: The Applicant's identified use includes storage of explosives, which is permitted conditionally under Malheur County Code 6-3H-3: "CONDITIONAL USES". Further, the Applicant will be engaging in storage of products not considered "hazardous" including racks, trailers and conveyance equipment, electronics, and the like. The Applicant seeks approval as a "Conditional Use" for overlay of an industrial zone over grounds currently zoned ERU. The Applicant's business falls within the "M-1 Light Industrial Zone" definition as Applicant's business activities will have minimal adverse environmental effects. Applicant has identified the following "adverse environmental effects":

- 1) Erection of perimeter security fencing;
- 2) Erection of berms for security as required by the State of Oregon or BATF & E;
- 3) Possible improvement of the private road surfaces within the perimeter of the proposed site to accommodate seasonal needs.

Applicant's business will not be "manufacturing" product on the site. No hazardous by-products will be created. No other "adverse environmental effects" have been identified by the Applicant since in inception of his business under the home occupation permit. No other "adverse environmental effects" are anticipated by the expansion of the Applicant's business.

6-3H-4: PERFORMANCE STANDARDS: Each structure or use permitted or conditionally permitted in the M-1 Zone shall meet the following performance standards: (Ord. 86, 12-7-1993)

A. Physical Appearance: With the exception of gasoline pumps and recreational parks, all operations other than pickups and deliveries shall be carried on within an enclosed building or behind a sight-obscuring fence or hedge. New materials or equipment in operable condition may be stored outside a building in containers not readily visible from beyond the property line. The

provisions of this subsection A shall not be construed to prohibit the display of merchandise or vehicles for sale or rental, or the storage of automobiles, farm machinery, trailers, manufactured homes or similar equipment in operable condition when in association with a permitted use. The required yard areas next to a street shall be landscaped except for driveway openings. (Ord., 11-8-1994)

Proposed Finding of Fact: Applicant's business must comply with State of Oregon Fire Marshal and BATF & E requirements. The Applicant envisions erecting a perimeter security fence. However, a sight-obscuring fence or hedge is not necessary and potentially creates a security threat to the Applicant's magazines. Due to the remoteness of the proposed location, the requirement that the Applicant's business be conducted within an enclosed building or behind a sight-obscuring fence or hedge should be waived as the proposed site is not in close proximity to other area businesses or residences. The screening requirement is intended to preserve nearby property aesthetics which are not at issue with this particular location. Additionally, the fact that surrounding lands are owned by the same owner further justifies waiving the screening requirement.

B. Hazard: No operation shall be established which fails to meet the State fire and electrical codes and any other applicable State or Federal codes related to safety. This provision shall not be construed to prohibit the use of normal heating fuels, motor fuels and welding gases when handled in accordance with applicable codes.

Proposed Finding of Fact: The Applicant's business is heavily regulated by both the State of Oregon Fire Marshal and BATF & E. To date, the Applicant's business has undergone extensive site inspections and records inspections. The Applicant's business to date is in full compliance with all safety requirements.

C. Noise: No operation shall be carried on which creates the noise in excess of the normal traffic noise of the adjacent street at the time of daily peak hour traffic volume. Noise volume generated by the use shall be measured at any property line. The comparable traffic noise shall be measured at the property line adjacent to the street. All noises shall be muffled so as not to be objectionable due to intermittence, beat frequency or shrillness.

Proposed Finding of Fact: Applicant's proposed site is ideally located to reduce noises generated on site which may include unloading and loading product into trucks. The nearest buildings or residences are located no less than one half mile from the proposed site and the geography of the site further lends to both sound and sight restriction. The Applicant would have the ability to bring power to the site at a future date which would be useful for a small office or on site shop for light manufacturing. Such activity is expected to be infrequent.

D. Sewage and Liquid Waste: All operations shall comply with any applicable regulations of the County, State or Federal agencies responsible for pollution control. No wastes of a chemical, organic or radioactive nature shall be injected or buried in the ground or stored in the open on the surface except in approved containers.

Proposed Finding of Fact: Inapplicable to the site or Applicant's business activities.

E. Smoke, Particulate Matter and Gases: No use shall be established which fails to meet the air quality regulations of the Oregon Department of Environmental Quality pertaining to emissions of smoke, particulate matter, fugitive dust, gases and other air contaminants.

Proposed Finding of Fact: Inapplicable to the site or Applicant's business activities.

F. Odor: The emission odors that are generally agreed to be obnoxious to any considerable number of persons is prohibited. Observations shall be made at the property line of the establishment generating the odor. As a general guide to classification of odor, it is deemed that odors of putrefaction, hydrogen sulfide, fermentation and rendering processes are objectionable while odors associated with baking, coffee roasting or nut roasting are normally not considered obnoxious.

Proposed Finding of Fact: Inapplicable to the site or Applicant's business activities.

G. Vibration: All machines shall be mounted so as to minimize vibration and in no case shall such vibration be perceptible, without the use of instruments, at the property line. The use of steam or broad hammers is not permitted in this Zone.

Proposed Finding of Fact: Inapplicable to the site or Applicant's business activities.

Occasional truck traffic will occur. However, the closest buildings or residences are located no less than one half mile from the proposed site and the geography of the site further lends to both

sound and vibration restriction

H. Glare and Heat: Any glare-producing operations, such as welding arcs, shall be shielded so that they are not visible from the property line. Surfaces near the glare source shall be of a type which will minimize the reflection of such glare beyond the property line. No heat from equipment or furnaces shall raise the temperature of materials or ambient air at the property line more than three degrees Fahrenheit (3° F).

Proposed Finding of Fact: Inapplicable to the site or Applicant's business activities.

I. Dust: All surfaces used in the operation of the use shall be graveled or paved with a dust-free surface. Gravel surfaces shall be watered down when conditions of use or weather cause dust to travel toward structures on adjacent properties.

Proposed Finding of Fact: The Applicant will use State of Oregon or Malheur County road surfaces (which are developed to reduce dust impacts) until the Applicant enters tax lot 900. There is currently a gravel surface road to the site. The Applicant may be required to further improve the road surface to meet all weather requirements, as well as to comply with Vale Rural Fire Dept. requirements and the Applicant will make all required improvements.

J. Interpretation: Whenever it cannot be decided by reasonable observation that a performance standard is being met, it shall be the responsibility of the operator of the use to supply evidence or engineering data to support the contention that a standard is being met. The standards are designed, except where referring to other codes, to be judged by ordinary human senses and not by the minute detail of scientific quality instruments. Until such evidence or engineering data is supplied and proves to be convincing, the judgment of the Planning Director shall be the determining factor. (Ord. 86, 12-7-1993).

Proposed Finding of Fact: The Applicant will meet all performance standards required by Malheur County Code. It is important to note that the Applicant's business is heavily regulated and inspected by both the State of Oregon Fire Marshal, as well as by BATF & E. To date, the Applicant's business has operated under a home occupation permit and has met all such standards.

6-3H-5: DIMENSIONAL STANDARDS: The following dimensional standards shall apply:

A. Minimum Lot Area: One acre or a larger area determined to be in compliance with the

applicable Department of Environmental Quality rules and regulations regarding sewage disposal and water supplies whether those are to be installed initially or not.

Proposed Finding of Fact: The Applicant seeks to create an industrial overlay zone incorporating a parcel 800' X 100' = 80,000 square feet (1.836544 acres). This should allow the Applicant sufficient space for storing product in compliance with BATF & E regulations, as well as permit the Applicant to engage in other uses previously identified to potentially occur on the site.

1. Permitted Uses Except Utilities: Twenty two thousand five hundred (22,500) square feet.
2. Utility Facilities: Public utility facilities are exempt from the minimum lot area requirement, provided they have sufficient area which, in the opinion of the Planning Commission, will not affect adjacent land uses.

Proposed Finding of Fact: Inapplicable: Applicant is not seeking to engage in public utilities activity within the proposed site.

- B. Minimum Lot Width: One hundred fifty feet (150').
- C. Maximum Lot Depth: Not more than three (3) times the lot width.
- D. Setbacks: No building or site-obscuring fence, shrubbery or structure shall be located closer than thirty feet (30') to a street or road right of way. No building (nor structure other than fence) shall be located closer to an interior property line than fifteen feet (15') or one-half (½) the building or structure height, whichever is greater. An exception exists when condominium structures are proposed requiring zero yard setbacks.
- E. Conditional Uses: Conditional use approvals may require greater dimensional standards than the above when the Commission determines they are needed in order for the proposed land use to meet the criteria of Chapter 6 of this Title.

Proposed Finding of Fact: The Applicant has determined that the proposed site dimensions, (a parcel 800' X 100' = 80,000 square feet (1.836544 acres) will sufficiently accommodate his current needs and should accommodate his growth potential. Greater dimensional standards should not be required by the Applicant's business.

INSTRUMENT NO. 2007 - 4696
Page 30 of 45 Pages

F. Exceptions: Public utility substations and other facilities are excepted from the minimum lot area and lot width and maximum lot depth standards. (Ord. 86, 12-7-1993).

Proposed Finding of Fact: Inapplicable.

6-3H-6: SITE PLAN REVIEW: Site plans for all permitted and conditional uses delineated in Sections 6-3H-2 and 6-3H-3 of this Article must be submitted to the Planning Commission pursuant to Chapter 5 of this Title. (Ord. 86, 12-7-1993).

Proposed Finding of Fact: Site plans for all permitted and conditional uses delineated in Sections 6-3H-2 and 6-3H-3 have been submitted in Applicant's original application, as supplemented by this Addendum.

6-3H-7: COMPLIANCE WITH STATE REGULATIONS: All uses involving manufacturing, repair, storage or processing shall meet all applicable standards and regulations of the State Board of Health, Department of Environmental Quality, and any other public agency having appropriate regulatory jurisdiction. Prior to issuance of a zoning permit for all permitted and conditional uses, evidence shall be submitted to the Planning Department indicating the proposed activity has been approved by all appropriate regulatory agencies. (Ord. 86, 12-7-1993).

Proposed Finding of Fact: As previously indicated, the Applicant's business activities, including storage, are heavily regulated by the State of Oregon Fire Marshal and BATF & E. To date, the Applicant has met or exceeded all applicable standards.

ANALYSIS: MALHEUR COUNTY COMPREHENSIVE PLAN GOALS (consistent with Statewide Goals):

Analysis and Applicability of Malheur County Comprehensive Plan Goals to Applicant's requested Industrial Overlay Zone:

Goal No. 1: Citizen Involvement: To ensure the opportunity for citizen involvement in all phases of the planning process.

Proposed Finding of Fact: Malheur County shall provide direct written notice of Applicant's requested action to surrounding property owners. Additionally, Malheur County shall cause that a

public notice of the Applicant's requests shall be published in the local news paper. Finally, Malheur County shall give notice to those affected state and local agencies, individuals and organizations otherwise entitled to such notice. Such notice assures that local citizens have an opportunity to become informed about and participate in the public hearing process. The requested industrial overlay zone shall comply with due process designed to assure full compliance with Statewide Goal No. 1.

Goal No. 2: Land Use Planning: To establish a land use planning process and policy framework as a basis for all decisions and actions related to the use of land and to ensure an adequate factual base for such decisions and actions.

Proposed Finding of Fact: Malheur County has established policies and procedures which require a detailed evaluation of any proposal to comply with its Comprehensive Plan. Specific criteria and standards have been established against which the Applicant's request must be evaluated in light of relevant Findings of Fact. The County's final decision in this matter will be based upon the weight of those relevant Findings of Fact. As previously indicated, the Applicant's proposal to establish an industrial overlay zone impacts lands currently zoned ERU. Statewide Goal 2 requires that consideration of Applicant's request follow the applicable criteria and procedures prescribed for goal 2 exceptions as codified under OAR Chapter 660. By following the applicable criteria and procedures, Malheur County is ensuring that the planning process and framework provides a legitimate basis for land use planning and decision making rather than allowing an ad hoc approach to land use decisions to prevail. Applicant's request is being evaluated in a manner assuring full compliance with Statewide Goal No. 2.

Goal No. 3: Agricultural Land: To preserve and maintain agricultural lands.

Proposed Finding of Fact: TL 2000 owned by Heid consists of 79.09 acres zoned ERU. Current use of the property is detailed in the Application pending. Refer to page three, paragraph eight. Applicant's proposed uses are contained in this Addendum, as well as set forth in the pending Application, page two, paragraph seven.

Statewide Planning Goal 3 defines agricultural land as "...land of predominantly Class I through VI soils...as identified in the Soil Capability Classification System of the United States Soil Conservation Service, and other lands which are suitable for farm use taking into consideration soil fertility, suitability for grazing, climatic conditions, existing and future availability of water for farm irrigation purposes, existing land-use patterns, technological and energy inputs required, or accepted farming practices." The Goal also provides for applying the "Agriculture" designation to lands in other classes which are necessary to permit farm practices to be undertaken on adjacent or nearby lands. Agricultural land does not include land within an acknowledged urban growth boundary or land within acknowledged exception areas.

Review of the Soil Survey for Malheur County, Oregon - Northeastern Part, prepared by the Natural Resources Conservation Service. Based on this document, the soil types cannot be determined as the subject site lies beyond the survey boundaries. The current owner (Heid) has owned the subject property since 06-19-2000. The Applicant is also familiar with the property and proposed site and asserts that the site is described as follows:

- i) Un-irrigated ground;
- ii) Shallow and rocky in nature / likely a class VI or VII soil;
- iii) Has not been used for crop production in recent history, if ever;
- iv) More suitable for a hay stack yard use.

Additionally, the subject property is not suitable for grazing due to location and lack of containment fencing. In summary, the entire property consists of soils that marginally, if at all, meet the definition of Agricultural Land. However, such lands comprise only a total of 1.5% of all agricultural lands found in Malheur County, Oregon.

As set forth infra, Applicant's industrial overlay zoning would exist only so long as the Applicant runs or owns/operates a majority of the business, Homeland Fireworks. The Applicant and owner have reached an agreement which preserves the ERU zoning, by having the property revert back to ERU zoning should the Applicant sell the business or not be primarily involved in operating the business. The owner, Heid, has identified this parcel in insignificant to his farm

practices and operation. Further, Heid supports placement of the business on the site located as placement of the business on other parcels owned by Heid would impact his farming practices. It is noteworthy that no farm or agricultural ground will be taken out of productivity.

Goal No. 4: Forest Lands: To preserve forest lands for forest use.

Proposed Finding of Fact: Inapplicable.

Goal No. 5: Open Space, Scenic and Historic Areas, and Natural Resources: To conserve open space and protect natural and scenic resources.

Proposed Finding of Fact: Inapplicable as this site has not been identified as a critical open space, scenic and natural area, or a natural resources requiring preservation.

Goal No. 6: Air, Water and Land Resource Quality: To maintain and improve the quality of the air, water and land resources of the state.

Proposed Finding of Fact: Applicant envisions as part of developing the proposed site that he may take the following action(s) which impact land resource quality:

- 1) Placement of perimeter security fencing around the site;
- 2) Placement of gravel or other surface improvements on the site for motor vehicle use and soils stability;
- 3) Erection of security berms around magazines.

Each of these activities will impact the quality of the land. However, it should be noted that none of these activities are permanent in nature; each of these activities may be removed or their impact alleviated with remedial measures. The Applicant has not identified any impact to air or water quality as there are no water sheds near by the proposed site and the Applicant will not be manufacturing on site.

The Applicant has identified occasional truck traffic to and from the site as the only other potential source for air, water and land quality impact. Trucks will be delivering container loads of product to the site occasionally during the year. Truck traffic will also occur as product is staged and shipped to shoots. The Applicant has determined that the size of the site

(a parcel 800' X 100' = 80,000 square feet (1.836544 acres) is adequate for truck loading, unloading and required truck radius turn around. Due to the infrequency of truck traffic, the Applicant cannot see any substantial impact upon air, water and land quality.

Goal No. 7: Areas Subject to Natural Disasters and Hazards: To protect life and property from natural disasters and hazards.

Proposed Finding of Fact: The subject property has been owned by Heid since 2000. Prior to that time, Heid was familiar with the property, as was the Applicant. Neither party has identified any natural hazards or potential disasters which impact this site. No significant water reserves are located near by, removing the threat of flooding. It is arguable that wild fire may present a potential hazard to the site. However, as Heid stacks hay nearby the proposed site, he maintains a fire break around the area. Furthermore, BATF & E requires that fire hazards be reduced by appropriate perimeter maintenance. Since the site will be subject to inspection by BATF & E personnel, State of Oregon Fire Marshal personnel, and potentially Vale Rural Fire District personnel, the Applicant is invested in preventing any situation which would lead to a fire hazard.

Goal No. 8: Recreational Needs: To satisfy the recreational needs of the citizens of the state.

Proposed Finding of Fact: Inapplicable. This is private property and not open for public recreational use. Further, the site will be ultimately fenced and secured from outside vehicle traffic.

Goal No. 9: Economy of the State: To diversify and improve the economy of the state.

Proposed Finding of Fact: The Applicant has injected substantial amounts into the local Malheur County economy by the following activities:

- a) Homeland Fireworks put on local shoots including the New Years Eve shoot in Vale, OR, and the 4th of July shoot in Ontario, OR. These events attract numerous spectators who purchase gas, food, meals in restaurants, and even lodging in the local area.

INSTRUMENT NO. 2007 - 4696
Page 41 of 45 Pages

- b) Homeland Fireworks purchases equipment, insurance, fuel, office supplies, lumber, electronics, and lumber locally when ever possible.
- c) Homeland Fireworks sponsors local trainings which have been attended by the Vale Volunteer Fire Dept., as well as by NASA Pyrotechnic Engineers.
- d) Applicant also does custom blasting work for local farmers, ranchers and the Roads Department.
- E) The Applicant has performed civic work, including shoots for local schools (Willowcreek Elementary) and has demonstrated for local Scout Troop 453.

Applicant's business has injected a business formerly non-existent to Malheur County. The Applicant is poised to enter into the distribution market for fireworks to out of state wholesalers (not retail sales to the public). The Applicant and his business are qualified to train persons to perform "shoots" in Oregon and the Applicant is qualified to shoot out of state as well. These activities bring dollars into Malheur County.

Goal No. 10: Housing: To provide for the housing needs of the citizens of the state.

Proposed Finding of Fact: Inapplicable: The proposal does not provide or require housing needs.

Goal No. 11: Public Facilities and Services: To plan and develop a timely, orderly and efficient arrangement for public facilities and services to serve as a framework for urban development.

Proposed Finding of Fact: Public facilities and services are not impacted by the Applicant's business to any significant extent. As mentioned, the Vale Rural Fire Dept. could be called upon should a fire/ explosion occur at the proposed site. The Applicant has provided training to the volunteers of the Vale Rural Fire Dept. in advance of such a disaster. Due to rigorous standards imposed by BATF & E and the Oregon Fire Marshal, the opportunity for fire/ explosion is greatly reduced.

Urban development is additionally not an issue as the remainder of TL 2000 continues to be

zoned ERU and thus, not subject to substantial urban development. As no farm dwellings exist on TL 2000, it is arguable that a farm dwelling could potentially be built on the property. However, TL 2000 is under the minimum parcel size for lands zoned ERU, which further impacts the ability for a farm or non-farm dwelling to be built on the property. Jamieson, OR is viewed by BATF & E as a highly desirable location for Applicant's business due to the sparseness of residences in the area, the remoteness of the site in conjunction to major road ways or transportation systems, and thus, the lessening of terrorism threats or thefts of explosives.

Goal No. 12: Transportation: To provide and encourage a safe, convenient and economic transportation system.

Proposed Finding of Fact: As set forth infra, the Applicant envisions the business will generate truck traffic associated with the following business activities:

- 1) Receiving container loads of product – shipped from Caldwell, ID via semi truck-trailer;
- 2) Shipping product to shoot locations via panel trucks;
- 3) Personal vehicle traffic associated with employees and the Applicant incidental to staging product, sorting product, equipment storage and the like.

The Applicant's business will use the following road systems: State Highway 26 to Jamieson, 14th Avenue West to TL 2000, then private roads located on TL 2000 to the subject property.

Geographical features are conducive to truck traffic: no visual obstructions will create a safety hazard for truck or vehicle traffic. Occasional farm vehicles use these roads. The Applicant has driven both farm and truck vehicles over these road systems and has not identified any areas where trucks associated with his business will create safety problems for farm or personal use vehicles. These roadways are of sufficient width to accommodate farm and non-farm traffic.

Goal No. 13: Energy Conservation: To conserve energy.


Proposed Finding of Fact: As indicated infra, the Applicant has studied the most economical

means to transport product to his proposed site. As the Applicant will not be manufacturing on site, energy usage is not a major issue. The Applicant further anticipates moving to a new residence located at 5235 John Day Highway. This residence is only a few miles distance from the proposed site, making it convenient as well as energy efficient for the Applicant due to the close proximity. The Applicant is required to transport product to distant locations for shoots. This is unavoidable. Western Fireworks likewise transports product to distant shooting locations.

Goal No. 14: Urbanization: To provide for an orderly and efficient transition from rural to urban land use.

Proposed Finding of Fact: Inapplicable: Applicant is not seeking to develop an "urban" setting. The industrial overlay zone supercedes, but does not replace the ERU zoning. No additional residences are involved with the Applicant's proposal. Should the business terminate or sell, the potential of reversion back to ERU zoning is great due to the operating agreements between Applicant and the owner.

Submitted this 30th day of November, 2006.


R. DAVID BUTLER II, Attorney for the Applicant.

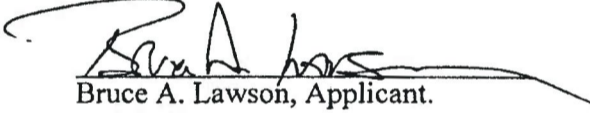
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Goal No. 14: Urbanization: To provide for an orderly and efficient transition from rural to urban land use.

Proposed Finding of Fact: Inapplicable: Applicant is not seeking to develop an "urban" setting. The industrial overlay zone supercedes, but does not replace the ERU zoning. No additional residences are involved with the Applicant's proposal. Should the business terminate or sell, the potential of reversion back to ERU zoning is great due to the operating agreements between Applicant and the owner.

Submitted this 29 day of November, 2006.


Bruce A. Lawson, Applicant.

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9

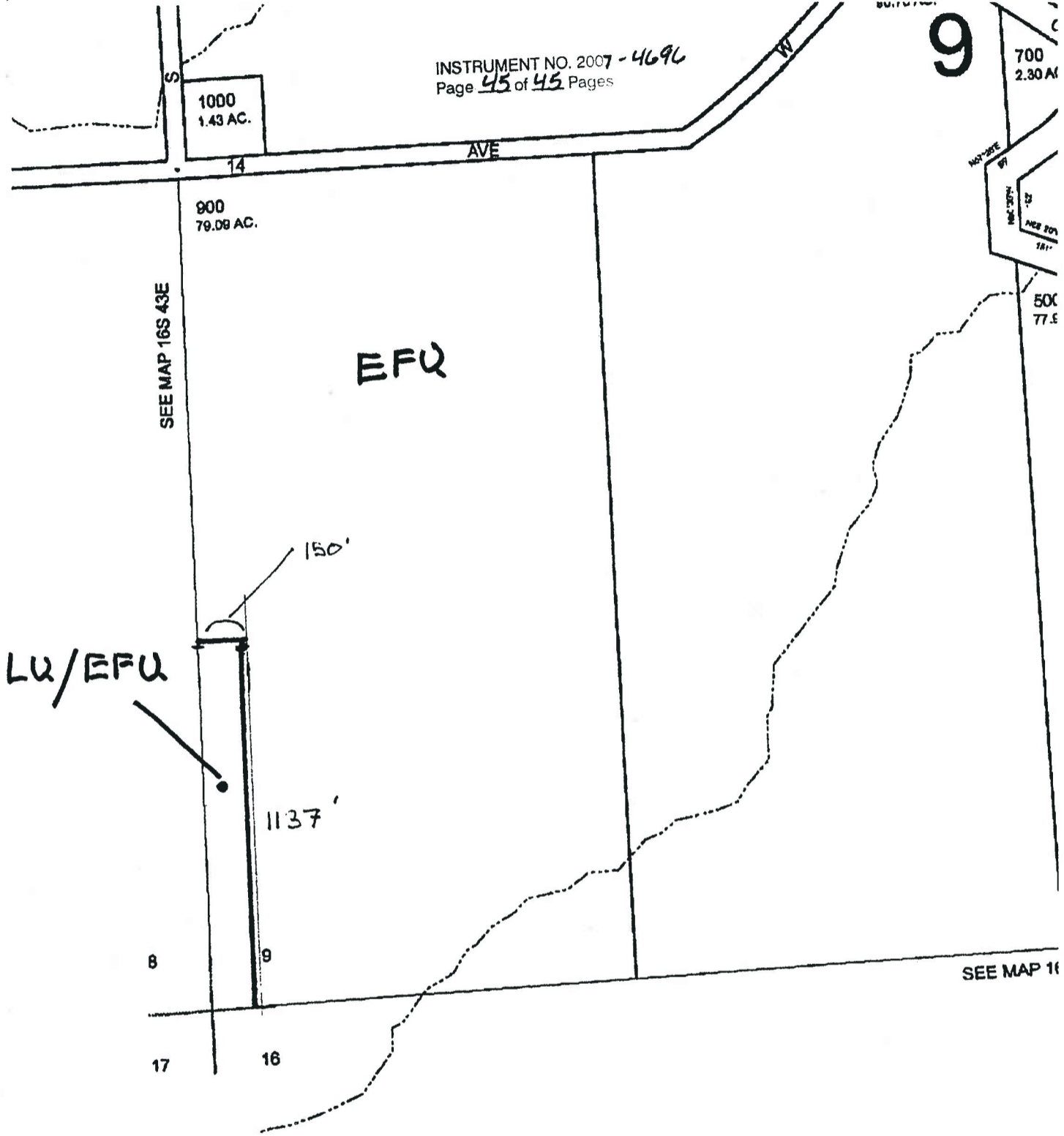


EXHIBIT # 3